

BOOK XXXI

THEORY OF THE FEUDAL LAWS AMONG THE FRANKS, IN THE RELATION THEY BEAR TO THE REVOLUTIONS OF THEIR MONARCHY

1.—Changes in the Offices and in the Fiefs

THE counts at first were sent into their districts only for a year; but they soon purchased the continuation of their offices. Of this we have an example in the reign of Clovis's grandchildren. A person named Peonius was count in the city of Auxerre; ^a he sent his son Mummolus with money to Gontram, to prevail upon him to continue him in his employment; the son gave the money for himself, and obtained the father's place. The kings had already begun to spoil their own favors.

Though by the laws of the kingdom the fiefs were precarious, yet they were neither given nor taken away in a capricious and arbitrary manner; nay, they were generally one of the principal subjects debated in the national assemblies. It is natural, however, to imagine that corruption crept into this as well as the other case; and that the possession of the fiefs, like that of the counties, was continued for money.

I shall show in the course of this book, ^b that, independently of the grants which the princes made for a certain time, there were others in perpetuity. The court wanted to revoke the former grants; this occasioned a general discontent in the nation, and was soon followed by that famous revolution in French history, whose first epoch was the amazing spectacle of the execution of Brunehaut.

That this queen, who was daughter, sister, and mother of so many kings, a queen to this very day celebrated for public monuments worthy of a Roman ædile or proconsul, born with

^a Gregory of Tours, book IV. chap. xlii.

^b Chap. 7.

an admirable genius for affairs, and endowed with qualities so long respected, should see herself of a sudden exposed to so slow, so ignominious and cruel a torture, ^c by a king whose authority was but indifferently established in the nation, ^d would appear very extraordinary, had she not incurred that nation's displeasure for some particular cause. Clotharius reproached her with the murder of ten kings; but two of them he had put to death himself; the death of some of the others was owing to chance, or to the villainy of another queen; ^e and a nation that had permitted Fredegonda to die in her bed, ^f that had even opposed the punishment of her flagitious crimes, ought to have been very different with respect to those of Brunehaut.

She was put upon a camel, and led ignominiously through the army; a certain sign that she had given great offence to those troops. Fredegarius relates, that Protarius, ^g Brunehaut's favorite, stripped the lords of their property, and filled the exchequer with the plunder; that he humbled the nobility, and that no person could be sure of continuing in any office or employment. The army conspired against him, and he was stabbed in his tent; but Brunehaut either by revenging his death, or by pursuing the same plan, ^h became every day more odious to the nation. ⁱ

Clotharius, ambitious of reigning alone, inflamed moreover with the most furious revenge, and sure of perishing if Brunehaut's children got the upper hand, entered into a conspiracy against himself; and whether it was owing to ignorance, or to the necessity of his circumstances, he became Brunehaut's accuser, and made a terrible example of that princess.

Warnacharius had been the very soul of the conspiracy formed against Brunehaut. Being at that time Mayor of Burgundy, he made Clotharius consent that he should not be displaced while he lived. ^j By this step the mayor could no longer

^c Fredegarius's "Chronicle," chap. xlii.

^d Clotharius II, son of Chilperic, and the father of Dagobert.

^e Fredegarius's "Chronicle," chap. xlii.

^f See Gregory of Tours, book VIII. chap. xxxi.

^g "Sæva illi fuit contra personas iniquitas, fisco nimium tribuens, de rebus personarum ingeniose fiscum velens implere . . . ut nullus reperire-

tur qui gradum quem arripuerat potisset adsumere."—Fredeg. "Chron." cap. xxvii., in the year 605.

^h Ibid. cap. xxviii., in the year 607.

ⁱ Ibid. cap. xli., in the year 613.

"Burgundie Farones, tam episcopi quam cæteri Leudes, timentes Brunehildem et odium in eam habentes, consilium inientes," etc.

^j Ibid. cap. xli., in the year 613. "Sacramento a Clothario accepto ne unquam vitæ suæ temporibus degradetur."

be in the same case as the French lords before that period; and this authority began to render itself independent of the regal dignity.

It was Brunehaut's unhappy regency which had exasperated the nation. So long as the laws subsisted in their full force, no one could grumble at having been deprived of a fief, since the law did not bestow it upon him in perpetuity. But when fiefs came to be acquired by avarice, by bad practices and corruption, they complained of being divested, by irregular means, of things that had been irregularly acquired. Perhaps if the public good had been the motive of the revocation of those grants, nothing would have been said; but they pretended a regard for order while they were openly abetting the principles of corruption; the fiscal rights were claimed in order to lavish the public treasure; and grants were no longer the reward or the encouragement of services. Brunehaut, from a corrupt spirit, wanted to reform the abuses of the ancient corruption. Her caprices were not owing to weakness, the vassals and the great officers, thinking themselves in danger, prevented their own by her ruin.

We are far from having all the records of the transactions of those days; and the writers of chronicles, who understood very nearly as much of the history of their time as our peasants know of ours, are extremely barren. Yet we have a constitution of Clotharius, given in the Council of Paris,^k for the reformation of abuses,^l which shows that this prince put a stop to the complaints that had occasioned the revolution. On the one hand, he confirms all the grants that had been made or confirmed by the kings his predecessors;^m and on the other, he ordains that whatever had been taken from his vassals should be restored to them.ⁿ

This was not the only concession the king made in that council; he enjoined that whatever had been innovated, in opposition to the privileges of the clergy, should be redressed;^o and he moderated the influence of the court in the election of

^k Some time after Brunehaut's execution, in the year 615. See Baluzius's edition of the Capitularies, p. 21.

^l Quæ contra rationis ordinem acta vel ordinata sunt, ne in antea, quod avertat divinitas, contingant, disposuerimus, Christo præsele, per hujus

edicti nostri tenorem generaliter emendare."—Ibid. art. 16.

^m Ibid. art. 16.

ⁿ Ibid. art. 17.

^o "Et quod per tempora ex hoc prætermissum est vel dehinc perpetualiter observetur."

bishops.^p He even reformed the fiscal affairs, ordaining that all the new censuses should be abolished,^q and that they should not levy any toll established since the deaths of Gontram, Sigebert, and Chilperic;^r that is, he abolished whatever had been done during the regencies of Fredegonda and Brunehaut. He forbade the driving of his cattle to graze in private people's grounds;^s and we shall presently see that the reformation was still more general, so as to extend even to civil affairs.

2.—How the Civil Government was reformed

Hitherto the nation had given marks of impatience and levity with regard to the choice or conduct of her masters; she had regulated their differences and obliged them to come to an agreement among themselves. But now she did what before was quite unexampled; she cast her eyes on her actual situation, examined the laws coolly, provided against their insufficiency, repressed violence, and moderated the regal power.

The bold and insolent regencies of Fredegonda and Brunehaut had less surprised than roused the nation. Fredegonda had defended her horrid cruelties, her poisonings and assassinations by a repetition of the same crimes; and had behaved in such a manner that her outrages were rather of a private than public nature. Fredegonda did more mischief: Brunehaut threatened more. In this crisis the nation was not satisfied with rectifying the feudal system; she was also determined to secure her civil government. For the latter was rather more corrupt than the former; a corruption the more dangerous as it was more inveterate, and connected rather with the abuse of manners than with that of laws.

The history of Gregory of Tours exhibits, on the one hand, a fierce and barbarous nation; and on the other, kings remarkable for the same ferocity of temper. Those princes were bloody, iniquitous, and cruel, because such was the character of the whole nation. If Christianity appeared sometimes to soften their manners, it was only by the circumstances of terror with which this religion alarms the sinner; the Church sup-

^p "Ita ut, episcopo decedente, in loco ipsius qui a metropolitano ordinari debet cum provincialibus, a clero et populo eligatur; et, si persona condigna fuerit, per ordinationem principis ordinetur; vel certe si de palatio eligatur,

per meritum personæ et doctrinæ ordinetur."—Ibid. art. 1.

^q "Et ubicumque census novus impie additus est, emendetur."—Art. 8.

^r Ibid. art. 9.

^s Ibid. art. 21.

ported herself against them by the miraculous operations of her saints. The kings would not commit sacrilege, because they dreaded the punishments inflicted on that species of guilt: but, this excepted, either in the riot of passion or in the coolness of deliberation, they perpetrated the most horrid crimes and barbarities where divine vengeance did not appear so immediately to overtake the criminal. The Franks, as I have already observed, bore with cruel kings, because they were of the same disposition themselves; they were not shocked at the iniquity and extortions of their princes, because this was the national characteristic. There had been many laws established, but it was usual for the king to defeat them all, by a kind of letter called precepts,^f which rendered them of no effect; they were somewhat similar to the rescripts of the Roman emperors; whether it be that our kings borrowed this usage from those princes, or whether it was owing to their own natural temper. We see in Gregory of Tours, that they perpetrated murder in cool blood, and put the accused to death unheard; how they gave precepts for illicit marriages;^g for transferring successions; for depriving relatives of their right: and, in fine, marrying consecrated virgins. They did not, indeed, assume the whole legislative power, but they dispensed with the execution of the laws.

Clotharius's constitution redressed all these grievances: no one could any longer be condemned without being heard:^v relatives were made to succeed, according to the order established by law;^w all precepts for marrying religious women were declared null;^x and those who had obtained and made use of them were severely punished. We might know perhaps more exactly his determinations with regard to these precepts, if the thirteenth and the next two articles of this decree had not been lost through the injury of time. We have only the first words of this thirteenth article, ordaining that the precepts shall be observed, which cannot be understood of those he had just abolished by the same law. We have another constitution

^f They were orders which the king sent to the judges to do or to tolerate things contrary to law.

^g See Gregory of Tours, book IV. p. 227. Both our history and the charters are full of this; and the extent of these abuses appears especially in Clotha-

rius's constitution, inserted in the edition of the Capitularies made to reform them. Baluzius's edition, p. 7.

^v Art. 22.

^w Ibid. art. 6.

^x Ibid.

by the same prince,^y which is in relation to his decree, and corrects in the same manner every article of the abuses of the precepts.

True it is, that Baluzius finding this constitution without date, and without the name of the place where it was given, attributes it to Clotharius I. But I say it belongs to Clotharius II, for three reasons: 1. It says, that the king will preserve the immunities granted to the churches by his father and grandfather.^z What immunities could the churches receive from Childeric, grandfather of Clotharius I, who was not a Christian, and who lived even before the foundation of the monarchy? But if we attribute this decree to Clotharius II we shall find his grandfather to have been this very Clotharius I who made immense donations to the Church, with a view of expiating the murder of his son Cramne, whom he had ordered to be burned, together with his wife and children.

2. The abuses redressed by this constitution were still subsisting after the death of Clotharius I and were even carried to their highest extravagance during the weak reign of Gontram, the cruel administration of Chilperic, and the execrable regencies of Fredegonda and Brunehaut. Now, can we imagine that the nation would have borne with grievances so solemnly proscribed, without complaining of their continual repetition? Can we imagine she would not have taken the same step as she did afterwards under Childeric II,^a when, upon a repetition of the old grievances, she pressed him to ordain that law and customs in regard to judicial proceedings should be complied with as formerly?^b

In fine, as this constitution was made to redress grievances, it cannot relate to Clotharius I, since there were no complaints of that kind in his reign, and his authority was perfectly established throughout the kingdom, especially at the time in which they place this constitution; whereas it agrees extremely well with the events that happened during the reign of Clotharius II, which produced a revolution in the political state of the kingdom. History must be illustrated by the laws, and the laws by history.

^y In Baluzius's edition of the Capitularies, tom. i. p. 7.

^z In the preceding book I have made mention of these immunities, which were grants of judicial rights, and contained prohibitions to the regal judges

to perform any function in the territory, and were equivalent to the erection or grant of a fief.

^a He began to reign towards the year 670.

^b See the "Life of St. Leger."

3.—*Authority of the Mayors of the Palace*

I noticed that Clotharius II had promised not to deprive Warnacharius of his mayor's place during life; a revolution productive of another effect. Before that time the mayor was the King's officer, but now he became the officer of the people; he was chosen before by the King, and now by the nation. Before the revolution Protarius had been made mayor by Theodoric, and Landeric by Fredegonda;^c but after that the mayors ^d were chosen by the nation.^e

We must not, therefore, confound, as some authors have done, these mayors of the palace with such as were possessed of this dignity before the death of Brunehaut; the King's mayors with those of the kingdom. We see by the law of the Burgundians that among them the office of mayor was not one of the most respectable in the state; ^f nor was it one of the most eminent under the first kings of the Franks.^g

Clotharius removed the apprehensions of those who were possessed of employments and fiefs; and when, after the death of Warnacharius,^h he asked the lords assembled at Troyes, who is it they would put in his place, they cried out they would choose no one, but suing for his favor committed themselves entirely into his hands.

Dagobert reunited the whole monarchy in the same manner as his father; the nation had a thorough confidence in him, and appointed no mayor. This prince, finding himself at liberty and elated by his victories, resumed Brunehaut's plan. But he succeeded so ill, that the vassals of Austrasia let themselves be beaten by the Slavonians, and returned home; so that the marches of Austrasia were left a prey to the barbarians.ⁱ

^c "Instigante Brunihault, Theodorico jubente," etc. — Fredegarius, chap. xxvii., in the year 605.

^d "Gesta regum Francorum," chap. xxxvi.

^e See Fredegarius's "Chronicle," chap. liv., in the year 626, and his "Anonymous Continuator," chap. ci., in the year 695, and chap. cv., in the year 715. Aimoin, book IV. chap. xv.; Eginhard, "Life of Charlemagne," chap. xlvi. "Gesta regum Francorum," chap. xlv.

^f See the law of the Burgundians in præfat. and the second supplement to this law, tit. 13.

^g See Gregory of Tours, book IX. chap. xxxvi.

^h "Eo anno, Clotarius cum pœceribus et leudibus Burgundiæ Treassinis conjungitur, cum eorum esset sollicitus si vellent jam, Warnachario discesso, alium in ejus honoris gradum sublimare; sed omnes unanimiter denegantes se nequaquam velle majorem domûs eligere, regis gratiam obnixè petentes, cum rege transegerunt." — Fredegarius, "Chronicle," chap. liv., in the year 626.

ⁱ "Istam victoriam quam Vinidi contra Francos meruerunt, non tantum Slavinarum fortitudo obtinuit, quantum dementatio Austrasiorum, dum se cernebant cum Dagoberto odium incurrisse, et assidue expoliarentur." — Fredegarius's "Chronicle," chap. lxxviii., in the year 630.

He determined then to make an offer to the Austrasians of resigning that country, together with a provincial treasure, to his son Sigebert, and to put the government of the kingdom and of the palace into the hands of Cunibert, Bishop of Cologne, and of the Duke Adalgisus. Fredegarius does not enter into the particulars of the conventions then made; but the King confirmed them all by charters, and Austrasia was immediately secured from danger.^j

Dagobert, finding himself near his end, recommended his wife Nentechildis and his son Clovis to the care of Æga. The vassals of Neustria and Burgundy chose this young prince for their king.^k Æga and Nentechildis had the government of the palace;^l they restored whatever Dagobert had taken;^m and complaints ceased in Neustria and Burgundy, as they had ceased in Austrasia.

After the death of Æga, Queen Nentechildis engaged the lords of Burgundy to choose Floachatus for their mayor.ⁿ The latter despatched letters to the bishops and chief lords of the Kingdom of Burgundy, by which he promised to preserve their honors and dignities forever, that is, during life.^o He confirmed his word by oath. This is the period at which the author of the Treatise on the Mayors of the Palace fixes the administration of the kingdom by those officers.^p

Fredegarius, being a Burgundian, has entered into a more minute detail as to what concerns the mayors of Burgundy at the time of the revolution of which we are speaking than with regard to the mayors of Austrasia and Neustria. But the conventions made in Burgundy were, for the very same reasons, agreed to in Neustria and Austrasia.

The nation thought it safer to lodge the power in the hands of a mayor whom she chose herself, and to whom she might prescribe conditions, than in those of a king whose power was hereditary.

^j "Deinceps Austrasii eorum studio limitem et regnum Francorum contra Vinidos utiliter defensasse noscuntur." — Fredegarius's "Chronicle," chap. lxxx., in the year 632.

^k Fredegarius's "Chronicle," chap. lxxix., in the year 638.

^l Ibid.

^m Ibid. chap. lxxx., in the year 639.

ⁿ Ibid. chap. lxxxix., in the year 641.

^o Ibid. cap. lxxxix. "Floachatus

cunctis ducibus a regno Burgundiæ, seu et pontificibus, per epistolas etiam et sacramentis firmavit unicuique gradum honoris et dignitatem, seu et amicitiam, perpetuo conservare."

^p "Deinceps a temporibus Clodovei, qui fuit filius Dagoberti inclyti regis, pater vera Theodorici, regnum Francorum decidens, per majorem domûs, cepit ordinari." — "De Majoribus Domûs Regiæ."

4.—*Of the Genius of the Nation in regard to the Mayors*

A government in which a nation that had an hereditary king chose a person to exercise the regal authority seems very extraordinary; but, independently of the circumstances of the times, I apprehend that the notions of the Franks in this respect were derived from a remote source.

The Franks were descended from the Germans, of whom Tacitus says *q* that in the choice of their King they were determined by his noble extraction, and in that of their leader, by his valor. This gives us an idea of the kings of the first race, and of the mayors of the palace; the former were hereditary, the latter elective.

No doubt but those princes who stood up in the national assembly and offered themselves as the conductors of a public enterprise to such as were willing to follow them, united generally in their own person both the power of the mayor and the king's authority. By the splendor of their descent they had attained the regal dignity; and their military abilities having recommended them to the command of armies, they rose to the power of mayor. By the regal dignity our first kings presided in the courts and assemblies, and enacted laws with the national consent; by the dignity of duke or leader, they undertook expeditions and commanded the armies.

In order to be acquainted with the genius of the primitive Franks in this respect, we have only to cast an eye on the conduct of Argobastes, *r* a Frank by nation, on whom Valentinian had conferred the command of the army. He confined the Emperor to his own palace; where he would suffer nobody to speak to him, concerning either civil or military affairs. Argobastes did at that time what was afterwards practised by the Pepins.

5.—*In what Manner the Mayors obtained the Command of the Armies*

So long as the kings commanded their armies in person the nation never thought of choosing a leader. Clovis and his four sons were at the head of the Franks, and led them on through

q "Reges ex nobilitate, duces ex virtute sumunt."—*De Moribus Germanorum.*

r See Sulpicius Alexander, in Gregory of Tours, book II.

a series of victories. Theobald, son of Theodobert, a young, weak, and sickly prince, was the first of our kings who confined himself to his palace.^s He refused to undertake an expedition into Italy against Narses, and had the mortification of seeing the Franks choose for themselves two chiefs, who led them against the enemy.^t Of the four sons of Clotharius I, Gontram was the least fond of commanding his armies;^u the other kings followed this example; and, in order to entrust the command without danger into other hands, they conferred it upon several chiefs or dukes.^v

Innumerable were the inconveniences which thence arose; all discipline was lost, no one would any longer obey. The armies were dreadful only to their own country; they were laden with spoils before they had reached the enemy. Of these miseries we have a very lively picture in Gregory of Tours.^w "How shall we be able to obtain a victory," said Gontram,^x "we who do not so much as keep what our ancestors acquired? Our nation is no longer the same. . . ." Strange that it should be on the decline so early as the reign of Clovis's grandchildren!

It was, therefore, natural they should determine at last upon an only duke, a duke invested with an authority over this prodigious multitude of feudal lords and vassals, who had now become strangers to their own engagements; a duke who was to establish the military discipline, and to put himself at the head of a nation unhappily practised in making war against itself. This power was conferred on the mayors of the palace.

The original function of the mayors of the palace was the management of the king's household. They had afterwards, in conjunction with other officers, the political government of fiefs; and at length they obtained the sole disposal of them.^y They had also the administration of military affairs, and the

^s In the year 552.

^t "Leutheres vero et Butilinus, tametsi id regi ipsorum minime placebat belli cum eis societatem inierunt."—Agathias, book I. Gregory of Tours, book IV. chap. ix.

^u Gontram did not even march against Gondevald, who styled himself son of Clotharius, and claimed his share of the kingdom.

^v Sometimes to the number of twenty. See Gregory of Tours, book V. chap. xxvii., book VIII. chap. xviii. and xxx., book X. chap. iii. Dagobert, who

had no mayor in Burgundy, observed the same policy, and sent against the Gascons ten dukes and several counts who had no dukes over them.—Fredegar's "Chronicle," chap. lxxviii., in the year 636.

^w Gregory of Tours, book VIII. chap. xxx., and book X. chap. iii. Ibid. book VIII. chap. xxx.

^x Ibid.

^y See the second supplement to the law of the Burgundians, tit. 13, and Gregory of Tours, book IX. chap. xxxvi.

command of the armies; employments necessarily connected with the other two. In those days it was much more difficult to raise than to command the armies; and who but the dispenser of favors could have this authority? In this martial and independent nation, it was prudent to invite rather than to compel; prudent to give away or to promise the fiefs that should happen to be vacant by the death of the possessor; prudent in fine to reward continually, and to raise a jealousy with regard to preferences. It was, therefore, right that the person who had the superintendence of the palace should also be general of the army.

6.—*Second Epoch of the Humiliation of our Kings of the first Race*

After the execution of Brunehaut the mayors were administrators of the kingdom under the sovereigns; and though they had the conduct of the war, the kings were always at the head of the armies, while the mayor and the nation fought under their command. But the victory of Duke Pepin over Theodoric and his mayor *z* completed the degradation of our princes; *a* and that which Charles Martel obtained over Chilperic and his Mayor Rainfroy confirmed it. *b* Austrasia triumphed twice over Neustria and Burgundy; and the mayoralty of Austrasia being annexed as it were to the family of the Pepins, this mayoralty and family became greatly superior to all the rest. The conquerors were then afraid lest some person of credit should seize the king's person, in order to excite disturbances. For this reason they kept them in the royal palace as in a kind of prison, and once a year showed them to the people. *c* There they made ordinances, but these were such as were dictated by the mayor; *d* they answered ambassadors, but the mayor made the answers. This is the time mentioned by historians of the government of the mayors over the kings whom they held in subjection. *e*

z See the "Annals of Metz, years 687 and 688.

a "Illis quidem nomina regum imponens, ipse totius regni habens privilegium," etc.—"Annals of Metz," year 695.

b "Annals of Metz," year 719.

c "Sedemque illi regalem sub sua ditione concessit."—Ibid. anno 719.

d "Ex chronico Centulensi," lib. 2,

"ut responsa qua erat edoctus vel potius jussus, ex sua velut potestate redderet."

e "Annals of Metz," anno 691. "Anno principatus Pippini super Theodoricum . . . 'Annals' of Fuld, or of Laurishan, Pippinus dux Francorum obtinuit regnum Francorum per annos 27, cum regibus sibi subjectis."

The extravagant passion of the nation for Pepin's family went so far that they chose one of his grandsons, who was yet an infant, for mayor; *f* and put him over one Dagobert, that is, one phantom over another.

7.—*Of the great Offices and Fiefs under the Mayors of the Palace*

The mayors of the palace were little disposed to establish the uncertain tenure of places and offices; for, indeed, they ruled only by the protection which in this respect they granted to the nobility. Hence the great offices continued to be given for life, and this usage was every day more firmly established.

But I have some particular reflections to make here in respect of fiefs: I do not question but most of them became hereditary from this time.

In the treaty of Andeli, *g* Gontram and his nephew Childbert engage to maintain the donations made to the vassals and churches by the kings their predecessors; and leave is given to the wives, daughters, and widows of kings to dispose by will, and in perpetuity, of whatever they hold of the exchequer. *h*

Marculfus wrote his formularies at the time of the mayors. *i* We find several in which the kings make donations both to the person and to his heirs: *j* and as the formularies represent the common actions of life, they prove that part of the fiefs had become hereditary towards the end of the first race. They were far from having in those days the idea of an unalienable demesne; this is a modern thing, which they knew neither in theory nor practice.

In proof hereof we shall presently produce positive facts; and if we can point out a time in which there were no longer any benefices for the army, nor any funds for its support, we must certainly conclude that the ancient benefices had been

f "Posthæc Theudoaldus filius ejus (Grimoaldi) parvulus, in loco ipsius, cum prædicto rege Dagoberto, major-domus palatii effectus est." The "Anonymous Continuator" of Fredegarius in the year 714, chap. civ.

g Cited by Gregory of Tours, book IX. See also the Edict of Clotharius II, in the year 615, art. 16.

h "Ut si quid de agris fiscalibus vel speciebus atque præsidio pro arbitrii sui voluntate facere aut cuiquam con-

ferre voluerint, fixa stabilitate perpetuo conservetur."

i See the 24th and the 34th of the first book.

j See the 14th formula of the first book, which is equally applicable to the fiscal estates given direct in perpetuity, or given at first as a benefice, and afterwards in perpetuity: "Sicut ab illo aut a fisco nostro fuit possessa." See also the 17th formula, *ibid.*

alienated. The time I mean is that of Charles Martel, who founded some new fiefs, which we should carefully distinguish from those of the earliest date.

When the kings began to make grants in perpetuity, either through the corruption which crept into the government or by reason of the constitution itself, which continually obliged those princes to confer rewards, it was natural they should begin with giving the perpetuity of the fiefs, rather than of the counties. For to deprive themselves of some acres of land was no great matter; but to renounce the right of disposing of the great offices was divesting themselves of their very power.

8.—*In what Manner the Allodial Estates were changed into Fiefs*

The manner of changing an allodial estate into a fief may be seen in a formulary of Marculfus.^k The owner of the land gave it to the king, who restored it to the donor by way of usufruct, or benefice, and then the donor nominated his heirs to the king.

In order to find out the reasons which induced them thus to change the nature of the *allodia*, I must trace the source of the ancient privileges of our nobility, a nobility which for these eleven centuries has been enveloped with dust, with blood, and with the marks of toil.

They who were seized of fiefs enjoyed very great advantages. The composition for the injuries done them was greater than that of freemen. It appears by the formularies of Marculfus that it was a privilege belonging to a king's vassal, that whoever killed him should pay a composition of six hundred sous. This privilege was established by the Salic law,^l and by that of the Ripuarians;^m and while these two laws ordained a composition of six hundred sous for the murder of a king's vassal, they gave but two hundred sous for the murder of a person freeborn, if he was a Frank or barbarian, or a man living under the Salic law;ⁿ and only a hundred for a Roman.

This was not the only privilege belonging to the king's vas-

^k Book I. formulary 13.
^l Tit. 44. See also tit. 66, secs. 3 and 4; and tit. 74.
^m Tit. 11.

ⁿ See also the law of the Ripuarians, tit. 7; and the Salic law, tit. 44, arts. 1 and 4.

sals. We ought to know that when a man was summoned in court, and did not make his appearance nor obey the judge's orders, he was called before the king;^o and if he persisted in his contumacy, he was excluded from the royal protection,^p and no one was allowed to entertain him, nor even to give him a morsel of bread. Now, if he was a person of an ordinary condition, his goods were confiscated;^q but if he was the king's vassal, they were not.^r The first by his contumacy was deemed sufficiently convicted of the crime, the second was not; the former for the smallest crimes was obliged to undergo the trial by boiling water,^s the latter was condemned to this trial only in the case of murder.^t In fine, the king's vassal could not be compelled to swear in court against another vassal.^u These privileges were continually increasing, and the Capitulary of Carloman does this honor to the king's vassals, that they should not be obliged to swear in person, but only by the mouth of their own vassals.^v Moreover, when a person, having these honors, did not repair to the army, his punishment was to abstain from flesh-meat and wine as long as he had been absent from the service; but a freeman^w who neglected to follow his count was fined sixty sous,^x and was reduced to a state of servitude till he had paid it.

It is very natural, therefore, to believe that those Franks who were not the king's vassals, and much more the Romans, became fond of entering into the state of vassalage: and that they might not be deprived of their demesnes, they devised the usage of giving their *allodium* to the king, of receiving it from him afterwards as a fief, and of nominating their heirs. This usage was continued, and took place especially during the times of confusion under the second race, when every man being in want of a protector was desirous of incorporating himself with the other lords, and of entering, as it were, into the feudal monarchy, because the political no longer existed.^y

This continued under the third race, as we find by several

^o Salic law, tits. 59 and 76.
^p "Extra sermonem regis." — Salic law, tits. 59 and 76.
^q Salic law, tit. 59, sec. 1.
^r Ibid. tit. 76, sec. 1.
^s Ibid. tits. 56 and 59.
^t Ibid. tit. 76, sec. 1.
^u Ibid. tit. 76, sec. 2.

^v "Apud vernis palatium," in the year 883, arts. 4 and 11.
^w Capitulary of Charlemagne, in the year 812, arts. 1 and 3.
^x "Heribannum."
^y "Non infirmis reliquit hæredibus," says Lambert d'Ardres in Ducange, on the word "alodis."

charters; ^z whether they gave their *allodium*, and resumed it by the same act; or whether it was declared an *allodium*, and afterwards acknowledged as a fief. These were called fiefs of resumption.

This does not imply that those who were seized of fiefs administered them as a prudent father of a family would; for though the freemen grew desirous of being possessed of fiefs, yet they managed this sort of estates as usufructs are managed in our days. This is what induced Charlemagne, the most vigilant and considerate prince we ever had, to make a great many regulations in order to hinder the fiefs from being demeaned in favor of allodial estates.^a It proves only that in his time most benefices were but for life, and consequently that they took more care of the freeholds than of the benefices; and yet for all that they did not choose rather to be the king's vassals than freemen. They might have reasons for disposing of some particular part of a fief, but they were not willing to be stripped of their dignity likewise.

I know, likewise, that Charlemagne laments in a certain Capitulary, that in some places there were people who gave away their fiefs in property, and redeemed them afterwards in the same manner.^b But I do not say that they were not fonder of the property than of the usufruct; I mean only, that when they could convert an *allodium* into a fief, which was to descend to their heirs, as is the case of the formulary above mentioned, they had very great advantages in doing it.

9.—How the Church Lands were Converted into Fiefs

The use of the fiscal lands should have been only to serve as a donation by which the kings were to encourage the Franks to undertake new expeditions, and by which on the other hand these fiscal lands were increased. This, as I have already observed, was the spirit of the nation; but these donations took another turn. There is still extant a speech of Chilperic,^c grandson of Clovis, in which he complains that almost all these

^z See those quoted by Ducange, in the word "alodis," and those produced by Galland, in his treatise of allodial lands, p. 14, and the following.

^a Second Capitulary of the year 802, art. 10; and the 7th Capitulary of the year 803, art. 3; the 1st Capitulary, "incerti anni," art. 49; the 5th Capitu-

lary of the year 806, art. 7; the Capitulary of the year 779, art. 29; the Capitulary of Louis the Pious, in the year 829, art. 1.

^b The fifth of the year 806, art. 8.

^c In Gregory of Tours, book VI, chap. xlvi.

lands had been already given away to the Church. "Our exchequer," says he, "is impoverished, and our riches are transferred to the clergy; ^d none reign now but the bishops, who live in grandeur while we are quite eclipsed."

This was the reason that the mayors, who durst not attack the lords, stripped the churches; and one of the motives alleged by Pepin for entering Neustria ^e was, his having been invited thither by the clergy, to put a stop to the encroachments of the kings, that is, of the mayors, who deprived the Church of all her possessions.

The mayors of Austrasia, that is the family of the Pepins, had behaved towards the clergy with more moderation than those of Neustria and Burgundy. This is evident from our chronicles,^f in which we see the monks perpetually extolling the devotion and liberality of the Pepins. They themselves had been possessed of the first places in the Church. "One crow does not pull out the eyes of another;" as Chilperic said to the bishops.^g

Pepin subdued Neustria and Burgundy; but as his pretence for destroying the mayors and kings was the grievances of the clergy, he could not strip the latter without acting inconsistently with his cause, and showing that he made a jest of the nation. However, the conquest of two great kingdoms and the destruction of the opposite party afforded him sufficient means of satisfying his generals.

Pepin made himself master of the monarchy by protecting the clergy; his son, Charles Martel, could not maintain his power but by oppressing them. This prince, finding that part of the regal and fiscal lands had been given either for life, or in perpetuity, to the nobility, and that the Church by receiving both from rich and poor had acquired a great part even of the allodial estates, he resolved to strip the clergy; and as the fiefs of the first division were no longer in being, he formed a second.^h He took for himself and for his officers the church

^d This is what induced him to annul the testaments made in favor of the clergy, and even the donations of his father; Gontram re-established them, and even made new donations.—Gregory of Tours, book VII, chap. vii.

^e See the "Annals of Metz," year 680. "Excitor imprimis querelis sacerdotum et servorum Dei, qui me sapius

adierunt ut pro sublatis injuste patrimoniis," etc.

^f See the "Annals of Metz."

^g In Gregory of Tours.

^h "Karolus plurima juri ecclesiastico detrahens pradia fisco sociavit, ac deinde militibus dispertivit."—"Ex Chronico Centulensi," lib. II.